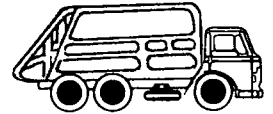


H.E. BOUFFARD AND CO.
RUBBISH REMOVAL SERVICE

Box 314
Kittery, Maine 03904
(207) 439-3626



SDMS DocID 559622

23 FEB 1990

February 20, 1990

Mr. Steven J. Calder
U.S. Environmental Protection Agency
Waste Management Division
JFK Federal Building, HSN-CAN5
Boston, MA 02203

Superfund Records Center
SITE: Coakley
BREAK: 119
OTHER: 559622

RE: Coakley Landfill, North Hampton, NH.
H.E. Bouffard & Co., Inc.'s response as a PRP.

Dear Sir,

In regards to your department's letter of February 2, 1990, informing H.E. Bouffard & Co., Inc. that we may be a "PRP" in regards to the above mentioned site, please accept this letter as our response.

The following description of activities performed by H.E. Bouffard & Co., Inc. is meant to answer questions posed in "Attachment A" of your letter.

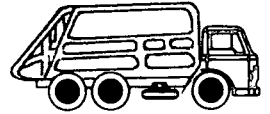
H.E. Bouffard & Co., Inc. is a small business involved in rubbish collection services, both curbside and containerized service, for the Kittery, ME, Pease Air Force Base, and Portsmouth seacoast areas. H.E. Bouffard & Co., Inc. held the contract for bulk container collections for Pease AFB and delivered solid waste to the site from Pease November 1980 - July 1982.

Solid waste was placed in H.E. Bouffard provided containers by Pease personnel. No segregation of material was performed by H.E. Bouffard & Co., Inc. A route truck made collections from the containers and delivered material to the Coakley site as per contract specifications. (Attachment #1).

H.E. Bouffard & Co., Inc. also entered into a joint venture agreement (Attachment #2) with CT Disposal, Greenland, NH for the purpose of transporting ash material from the Portsmouth Energy Recovery Facility (P.E.R.) to the site, September 23, 1983 through August 30, 1984. Ash material was loaded into P.E.R. provided containers by P.E.R. personnel. H.E. Bouffard & Co., Inc. transported material

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February 20, 1990

to the site under our agreement with CT Disposal. CT Disposal held the contract with the City of Portsmouth (Attachment #3). H.E. Bouffard & Co., Inc. received payment for services from CT Disposal.

H.E. Bouffard & Co., Inc. acted only as a transportation agent in the performance of the two aforementioned contracts. H.E. Bouffard & Co., Inc. did not transport any material to the site other than under those contracts. At no time did H.E. Bouffard & Co., Inc. take title to any material delivered to the site from either Pease AFB or the P.E.R. Facility. Payment of all tipping fees and disposal fees for material transported by H.E. Bouffard & Co., Inc. was made by either Pease AFB, for rubbish involved in the bulk container contract, or the City of Portsmouth, for ash generated at the P.E.R. Facility. All material transported to the site by H.E. Bouffard & Co., Inc. was done so under permits for disposal held by either Pease AFB or the City of Portsmouth.

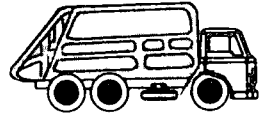
H.E. Bouffard & Co., Inc. wishes to be kept informed of any and all activities concerning the response actions for the site. H.E. Bouffard & Co., Inc. does wish to participate with the E.P.A. and any Steering Committee of PRP, for the resolution of any possible liabilities in connection with the site. The preceding statements are not meant to represent any assumption of liability by H.E. Bouffard & Co., Inc. for the performance or financing of activities required at the site. Point of contact for any further information is:

Fred H. Smith
c/o H.E. Bouffard & Co., Inc.
P.O. Box 314
Kittery, Maine 03904
(207) 439-3626

Thank you for this opportunity to express H.E. Bouffard & Co., Inc. role in the transportation of material to the Coakley Landfill.

H.E. BOUFFARD AND CO.
RUBBISH REMOVAL SERVICE

Box 314
Kittery, Maine 03904
(207) 439-3626



February 20, 1990

Should any further information be required, please contact me at the above address.

Sincerely,

Fred H. Smith
Vice President

FHS:blf

Attachments:

1. Scope of work Pease AFB contract
2. Joint Venture agreement with CT Disposal
3. Notice of award - Ash Disposal - CT Disposal

E27604 81 C0002

IFB: F27604-80-B0026

SECTION CREFUSE COLLECTION

1-01. SCOPE: The work includes furnishing all plant, labor, and equipment for performing all operations necessary for the collection and disposal of refuse from the designated on-base locations and such other temporary locations as directed by the Contracting Officer at Pease Air Force Base, New Hampshire, in strict accordance with these specifications and applicable drawings, subject to the terms of this contract. The approximate number of permanent collection locations is 94 with 6 additional locations during seasonal activities.

1-02. PRINCIPAL FEATURES:

a. Provide adequate refuse collection for various base buildings as directed by the Contracting Officer. The Government estimates an average of 220 tons per month. Monthly tonnage may range from a low of 180 tons to a high of 260 tons.

b. Provide a total of 462 cubic yards of permanent and 28 cubic yards seasonal refuse containers for the storage of refuse prior to collection. The volume of individual container shall be between 2 and 12 cubic yards. Location and frequency of pickup for the permanent and seasonal refuse containers are shown on the drawings.

c. Contract bids will be lump sum for the twelve (12) month period from 1 October 1980 to 30 September 1981. Payments shall be made monthly at 1/12 the lump sum bid.

d. Method of Disposal: All refuse will be disposed of at the City of Portsmouth, New Hampshire, operated landfill in North Hampton, New Hampshire.

The above items shall not be construed as authorizing any deviations from the details of the remaining section of these Technical Provisions.

1-03. SUBMITTALS: Approval of submittals shall not be construed as authorizing any deviations from the specifications unless the attention of the Contracting Officer has been directed to the specific deviations and has approved the deviations. The Contractor shall submit the following data for written Government approval as applicable to the referenced paragraphs:

a. Definitive information on the type and size of collection trucks to be used and the City of Portsmouth landfill decal number. Reference Paragraph 1-05.

b. The size and type of refuse containers to be used. Reference Paragraph 1-05.

c. Method of Disposal: Compliance with local, State, and Federal regulations. Location of the site. Reference Paragraph 1-02.d..

d. Type of disinfectant and method of application used to disinfect containers. Submittal required within 15 days after contract award.

1-04. OPERATING STANDARDS:

a. The refuse collection methods outlined herein are preferred by the Government, however, the Contractor may submit, for approval of the Contracting Officer, other methods that comply with requirements and that the Contractor believes will improve operating efficiency.

b. The Contractor will immediately notify the Contracting Officer and the Construction Management Inspector of equipment breakdown. Actual or impending labor problems that will affect his schedule will also be reported. He will take corrective measures to insure continuity of service.

c. The Contractor will not mingle collected off-base with base loads.

JOINT VENTURE AGREEMENT

THIS AGREEMENT made this 25th day of August, 1983
between H.E. BOUFFARD AND COMPANY, a partnership registered to
do business in Kittery, York County, Maine, hereinafter referred
to as "A" and COAKLEY CONIST INC.
C. T. DISPOSAL, a D.B.A. C.T. DISPOSAL
A NEW HAMPSHIRE CORP., hereinafter referred to as "B".

WITNESSETH

In consideration of the mutual covenants expressed herein,
and other good and valuable consideration, the parties hereto
hereby agree as follows:

(1) Formation. A and B hereby form a joint venture for
the term and purposes herein and in accordance with the provisions
of this Agreement.

(2) Purpose. A and B wish to create a joint venture
for the purpose of providing contract rubbish removal services
within the confines of the territory included in the certificate
of public convenience and necessity issued to B by the New
Hampshire Public Utilities Commission. Said services shall be
conducted in accordance with the laws of the State of New
Hampshire and the Rules and Regulations for Motor Vehicles
Transporting Property for Hire as established and amended from
time to time by the New Hampshire Public Utilities Commission.

(3) Property.

(a) A hereby agrees to lease to the joint venture and
the joint venture hereby agrees to rent from A all equipment,
including, but not limited to, trucks and other vehicles,

containers and any other equipment necessary to adequately provide contract rubbish removal services within the territory included in the certificate of public convenience and necessity.

(b) In accordance with the provisions of paragraph (7) of this Agreement, the joint venture shall pay A a rent for lease of equipment. Said rent shall be based upon the type and amount of equipment leased to the joint venture and shall be according to a schedule agreed to by the parties to the joint venture and attached hereto as Exhibit A. The rental fee shall be payable monthly and shall be paid within ten days after receipt of an invoice from A. Said rent shall not be subject to any discount.

(c) The equipment is to be transported by A to appropriate locations as necessary. A shall bear the expense and furnish the facilities and labor needed to move the equipment from one site to another, as required. The time spent in so moving equipment shall constitute a separate and additional charge to the joint venture.

(d) A shall provide operators and other labor as necessary to operate the equipment during the term of the lease.

(e) A shall, at its own expense, supply the fuel, lubricating oil, repair parts and all other items needed to operate the equipment and to maintain it in good operating condition during the term of this lease.

(f) A shall, at its own expense, obtain workers' compensation insurance coverage for its own employees, as well as public liability insurance with limits of \$250,000 for the injury to or

death of more than one person, property damage insurance with limits of \$500,000 arising out of a single accident and \$1,000,000 for damage to the property of third persons. The public liability and property damage insurance shall cover both A and the joint venture as their interests appear. Evidence that such coverage is in force will be furnished to the joint venture prior to the commencement of this lease.

(g) A shall indemnify and save harmless the joint venture from and against all claims and demands on account of the damage to, destruction of, or loss of property and the injury to or death of any employee, officer, or agent of the joint venture or A. A shall indemnify and save harmless the joint venture from and against all claims and demands on account of the injury to or the death of any other person or persons, as well as the destruction of, damage to, or loss of property arising out of the operation of the equipment. Notwithstanding anything to the contrary herein, under no circumstances shall A be liable for any injuries caused intentionally or negligently by B or an employee of B acting outside the scope of this joint venture.

(h) Should any suit or action be commenced or any claim asserted against the joint venture for or on account of any loss, damage, or injury for which A is liable as provided in subparagraph (g) of paragraph (3) of this Agreement, the joint venture shall be obligated to give A reasonable written notice therefor. Thereupon A shall assume the defense of any such suit or action. Should A assume the defense of any such suit or action, A shall have the right to exercise complete control and discretion in the conduct and settlement of such litigation.

(1) B hereby agrees to contribute to the joint venture the rights awarded him under the certificate of public convenience and necessity issued by the New Hampshire Public Utilities Commission; provided, however, that B shall be entitled to separately maintain any contracts for service existing prior to the date of this Agreement for himself.

(4) Working Capital. All necessary capital when and as required for the performance and prosecution of contracts entered into by the joint venture shall be furnished by the parties proportionately in accordance with their respective interests as set forth herein.

If any party fails or is unable to provide its proportionate share of the funds required by the joint venture within thirty (30) days from the date of the written request for working capital the interest of that party in the return of investment and profits of this joint venture shall be decreased to the proportion that the amount actually provided by it bears to the total amount of the funds provided by all parties, and the interest of any party that may have contributed more than its proportionate share of such funds shall be increased in the same proportion. Nothing contained herein shall increase or decrease the proportionate liability of the parties hereto for losses suffered or sustained by the joint venture.

(5) Management. The parties hereby designate A as the manager of the joint venture. A shall be primarily responsible for the solicitation of business and contracts for rubbish

removal, with B providing any assistance requested by A. A shall have general supervisory control over contracts of the joint venture and shall make all day-to-day decisions concerning conduct of services provided by the joint venture. The officers, employees, and agents designated by the manager are hereby authorized to carry out the performance of the joint venture on behalf of the joint venturers, and the parties agree, if required, to furnish to the manager, or such person as may be designated by him, a power of attorney sufficiently broad to enable the manager to properly perform the duties entrusted to him. The manager shall have authority to incur necessary obligations in connection with and for the benefit of the joint venturers, which obligations shall be borne by the parties in accordance with the percentages set forth herein. Such obligations shall include salaries, traveling, and other expenses paid by the manager to those of his employees who are assigned to the performance of the project.

(6) Accounts and Accounting. All funds advanced by the parties or borrowed for account of the joint venture or received for the performance of contracts of the joint venture or received for the performance of contracts of the joint venture shall be deposited to the account of the joint venture in an account to be established at such bank as the manager may designate, subject to withdrawal by such person or persons as the manager may from time to time designate in writing.

Books of account correctly and adequately reflecting the business transactions of the joint venture shall be kept by the manager in accordance with good accounting practices. Such books shall be open to inspection of any party at any reasonable time. Reports of the financial condition of the joint venture and the progress of the work shall be made to each party periodically.

(7) Expenses of Operation. All expenses incurred by the manager in the course of conducting the joint venture, including counsel's fees, brokers' commissions, and all other business disbursements and expenditures, but specifically excluding capital expenditures, shall be a valid charge against the business gross profits, and must be discharged prior to calculating the net profits for distribution to the parties. No distribution of profits, if any, shall be made until all liabilities incurred in connection with the joint venture, contingent or otherwise, but excluding capital expenditures, as well as taxes, utilities, and other obligations, have been satisfied.

(8) Division of Profits. The interest of the parties in and to any profits and assets derived from the performance of contracts for rubbish removal services entered into by the joint venture, and in and to any property acquired by the joint venture in connection with the work to be performed hereunder, and in and to all contributions required, all monies received, and losses incurred in the performance of the contracts of the

joint venture shall be those percentages set opposite their names, respectively, as follows:

<u>A</u>	_____ %
<u>B</u>	_____ %

Said profits and assets shall be divided only after payment of all liabilities of the joint venture as set forth in Sections (3) and (7) hereof.

(9) Assignments and Transfers. Neither this agreement nor the interest of the parties or any of them herein, including any party's respective interest in any moneys belonging to or that may accrue to the joint venture in connection with its contracts, may be assigned, pledged, transferred, or hypothecated, except that in the event a party desires to obtain banking accommodations, such party may assign, pledge, or hypothecate to the lending institution as security for such banking accommodations its interest in the moneys to be received by such party hereunder when distributed to it in accordance with the terms hereof, if the other parties hereto give their written consent thereto in advance.

(10) Binding Effect. Subject to the provisions herein contained, this Agreement shall inure to the benefit of and be binding on the parties hereto, their successors, trustees, assigns, receivers, and legal representatives, but shall not inure to the benefit of any other person, firm or corporation.

(11) Arbitration. Should any dispute arise among the parties hereto concerning any matter hereunder, such dispute shall, without prejudice to the rights of the parties to pursue their remedies in the courts of law, first be submitted to arbitration in accordance with the latest Commercial Arbitration Rules of the American Arbitration Association. The parties shall resort to such arbitration proceedings before any suit may be brought by one party against the other with respect to any item that shall be the subject matter of arbitration hereunder.

(12) Bankruptcy of Dissolution. In the event of the bankruptcy or dissolution of any of the parties hereto, this joint venture shall immediately terminate. Thereafter, the successors, receivers, trustees, or other legal representatives, hereinafter called representatives, of any party so affected shall cease to have any interest in contracts of the joint venture and shall cease to have any interest in and to the joint venture or the assets thereof. In any such case the remaining party shall have the right to wind up the affairs of the joint venture and to carry out and complete performance of any contracts. On such completion or sooner termination and receipt of payment of all amounts due under the contracts of the joint venture, the remaining party shall account to the representative of the party so affected and such representative shall then be entitled to receive from the remaining joint venturer an amount equal to the sums advanced by the party represented, plus such party's

proportionate share of the profits, or less such party's proportionate share of the losses resulting from the performance of contracts of the joint venture to the date of termination of the joint venture. The profit or loss computed as of the date of the termination shall be in the same proportion to the whole profit or loss resulting from the performance of contracts of the joint venture as the amount of work done thereunder at such time bears to all of the work done thereunder.

(13) Voluntary Termination.

(a) This joint venture may be terminated at any time the parties jointly agree to do so. On termination all assets of the joint venture shall be liquidated, as quickly as practicable but in a manner that minimizes the usual losses occurring in a liquidation. A or B may bid for and purchase any of the assets of the joint venture.

(b) The proceeds of liquidation after termination are to be applied in the following order of priority:

- (i) Payment of the expenses of liquidation.
- (ii) Payment of all other debts and obligations of the joint venture, and the creation of a reserve for any contingent liabilities of the joint venture.
- (iii) Payment to A and B, pro rata, of their capital contributions.
- (iv) The balance is payable _____ percent to A and _____ percent to B.

(14) Involuntary Termination. If at any time during the course of this Agreement the State of New Hampshire acting through the Public Utilities Commission or through any court of competent jurisdiction, enjoins operation of the joint venture or otherwise prevents the proper fulfillment of validly contracted service obligations, the parties shall have the option of terminating the joint venture forthwith. In the event either party desires to assume contracts of the joint venture, and is legally capable of doing so, the parties may make whatever arrangements are necessary in order to facilitate such assumption.

(15) This Agreement may be altered at any time by the decision of the parties confirmed by an agreement in writing.

~~(16) In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.~~

~~(17) Governing Law. This Agreement shall be governed by the laws of the State of Maine.~~

(16) Severability. In the event any parts of this Agreement are found to be void, the remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

(17) Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire.

IN WITNESS WHEREOF, A and B, through their respective officers and duly authorized agents, have hereunto set their hands and seals to two (2) counterparts of this Agreement, each of which shall constitute an original, this 25th day of August, 1983, in the ^{TOWN} ~~City~~ of GREENLAND, County of Rockingham and State of New Hampshire.

William J. Jones
Witness

William J. Jones
Witness

Witness

Robert W. [Signature]
William B. [Signature]



City of Portsmouth, New Hampshire 03801

CITY HALL . . . 126 DANIEL STREET

C. T. Disposal
480 Breakfast Hill Road
Greenland, New Hampshire

Attn: Ronald C. Coakley

Re: Bid Proposal No. 18
Ash Removal Contract - P.E.R.P.
Notice of Award

Dear Mr. Coakley:

Please be advised that your submittal for the subject proposal has been accepted by the City of Portsmouth.

You are required by the Conditions of Proposal to post surety and commence work within fifteen (15) days of the date of this notice.

Please return an acknowledged copy of this notice.

Dated this 13th day of September, 1983.

City of Portsmouth, N.H.

Robert J. Sombric
Purchasing Agent

Receipt of the above Notice of Award is acknowledged by

dated this _____ day of _____, 19__.

BY: _____

TITLE: _____

City of the Open Door

